IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11462 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FAISALBHAI ALIBHAI MALEK

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 11462 of 2001

MR SATISH R PATEL for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 7.8.1998 passed by the District Magistrate, Bharuch in exercise of power under Section 3 of the PASA Act, which was executed on 4.10.2001. The

petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a dangerous person. The detaining authority has considered three registered offences against the detenu. The detaining authority has also considered statements of three anonymous witnesses and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public order.

3. Learned Advocate for the petitioner submitted that so far as statements are concerned, the authority has exercised powers under Sec. 9(2) of the PASA Act, in absence of any cogent material. No exercise is undertaken to verify whether the fear expressed by the witnesses is genuine or imaginery. This improper exercise of powers of claiming privilege under Sec. 9(2) of the PASA Act has also affected the right of the detenu of making an effective representation. He therefore urged that the petition may be allowed.

4. Learned Assistant Government Pleader Mr. D.P. Joshi has opposed to this petition.

5. The order is assailed only on the ground of non-consideration of the representation. A representation was made by the detenu on 28.11.2001 addressed to the District Magistrate, Bharuch. Learned Counsel for the petitioner places on record the original acknowledgement slip to indicate that the representation was received by the District Magistrate, Bharuch on 29.11.2001. Learned APP instructed by the Deputy Section Officer from the Home Department and verifying the file himself states that the representation has not been received by the Home Department. Probably the detaining authority failed to forward the same to the Government. The result is that the petitioner's representation has remained unattended till today and therefore, the right of the petitioner is affected. The petition therefore, deserves to be allowed.

6. The petition is therefore, allowed. Order of detention dated 7.8.1998 passed by the District Magistrate, Bharuch and executed on 4.10.2001 is quashed and set aside. Detenu Faisalbhai Alibhai Malek be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct

service permitted.

(A.L.Dave,J.)

*/Mohandas